



January 26, 2006

HOUSE BILL No. 1258

DIGEST OF HB 1258 (Updated January 25, 2006 12:35 pm - DI 52)

Citations Affected: IC 14-8; IC 14-9; IC 14-15; IC 14-21; IC 14-22; IC 23-14; IC 35-45; noncode.

Synopsis: Disturbance of land. Defines "artifact" as a significant object made by a human before December 31, 1870. Requires a person who disturbs buried human remains or artifacts to cease disturbing the area within 50 feet of the remains or artifacts. Makes it a Class A infraction to violate certain duties concerning the unintentional discovery of artifacts. Allows confidentiality of location information of historical or archeological sites. Allows certain persons to accompany a conservation officer to investigate a violation of a historic preservation and archeology law. Establishes a fund to assist private homeowners who accidentally discover an artifact, a burial object, or human remains and need assistance to comply with a plan. Allows the court to order restitution for certain costs related to the violation of the historic preservation and archeology law. Makes it a Class D felony to possess looted property and provides that the offense is a Class C felony if the cost of carrying out an archeological investigation on the site that was damaged to obtain the looted property is more than \$100,000. Provides that a disinterment under a plan approved by the department of natural resources is exempt from other disinterment procedures. Makes conforming changes. Repeals a definition of "conservation officer", and reenacts the definition to make it apply throughout the natural resources title. Makes littering a Class A misdemeanor instead of a Class B infraction if refuse is placed or left in, on, or within 100 feet of a body of water that is under the jurisdiction of the: (1) department of natural resources; or (2) United States Army Corps of Engineers.

Effective: July 1, 2006.

Yount, Saunders, Goodin

January 10, 2006, read first time and referred to Committee on Natural Resources.
January 25, 2006, amended, reported — Do Pass.

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January 26, 2006

Second Regular Session 114th General Assembly (2006)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2005 Regular Session of the General Assembly.

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HOUSE BILL No. 1258

A BILL FOR AN ACT to amend the Indiana Code concerning natural and cultural resources.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 14-8-2-53 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 53. "Conservation
3 officer" ~~for purposes of IC 14-9-8, has the meaning set forth in~~
4 ~~IC 14-9-8-1; refers to an officer employee of the law enforcement~~
5 **division.**

6 SECTION 2. IC 14-15-2-8 IS AMENDED TO READ AS
7 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. **(a) This section**
8 **does not apply to a body of water that is under the jurisdiction of**
9 **the:**

10 **(1) department; or**

11 **(2) United States Army Corps of Engineers.**

12 ~~(a)~~ **(b)** As used in this section, "litter" means bottles, glass, crockery,
13 cans, scrap metal, junk, paper, garbage, rubbish, plastic, or similar
14 refuse.

15 ~~(b)~~ **(c)** In the operation or use of watercraft, a person may not throw,
16 dump, place, deposit, or cause or permit to be thrown, dumped, placed,
17 or deposited:

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- 1 (1) any litter, filth, or putrid or unwholesome substance; or
 2 (2) the contents of a water closet or toilet, catch basin, or grease
 3 trap;
 4 in or upon public water or the banks of public water.

5 SECTION 3. IC 14-21-1-2 IS AMENDED TO READ AS
 6 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. As used in this
 7 chapter, "artifact" means an object made or shaped by human
 8 workmanship before December ~~11, 1816~~ **31, 1870, that the division**
 9 **determines is significant.**

10 SECTION 4. IC 14-21-1-27 IS AMENDED TO READ AS
 11 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 27. (a) **Except as**
 12 **provided in subsection (b),** a person who disturbs buried human
 13 remains shall do the following:

14 **(1) Immediately cease disturbing the human remains and the**
 15 **area within one hundred (100) feet of the human remains.**

16 ~~(1)~~ **(2)** Notify the department within two (2) business days of the
 17 time of the disturbance.

18 **(3) Refrain from covering over the human remains.**

19 **(4) Submit a development plan to the department under**
 20 **section 26.5 of this chapter.**

21 ~~(2)~~ **(5)** Treat or rebury the human remains in a manner and place
 22 according to rules adopted by the commission or a court order and
 23 permit issued by the state department of health under
 24 IC 23-14-57.

25 **(b) Subsection (a)(4) does not apply to an entity referred to in**
 26 **section 26.5(a)(1) through 26.5(a)(4) of this chapter.**

27 ~~(b)~~ **(c)** A person who recklessly, knowingly, or intentionally violates
 28 this section commits a Class A misdemeanor.

29 SECTION 5. IC 14-21-1-29 IS AMENDED TO READ AS
 30 FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 29. (a) A person who
 31 discovers an artifact or burial object while disturbing the ground for a
 32 purpose other than the discovery of artifacts or burial objects shall do
 33 the following:

34 **(1) Immediately cease disturbing the ground and the area within**
 35 **fifty (50) feet of the artifact or burial object.**

36 **(2) Refrain from covering over the artifact or burial object.**

37 ~~(2)~~ **(3)** Notify the department within two (2) business days after
 38 the time of the disturbance.

39 **(b) After notification under subsection (a) the department may do**
 40 **any of the following:**

41 **(1) Authorize the person to continue the ground disturbing**
 42 **activity, with or without conditions.**

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(2) Require that continued ground disturbance activity be conducted only in accordance with an approved plan. However, this subdivision does not apply after thirty (30) days from the date that the department receives notice.

(c) A person who violates subsection (a) commits a Class A infraction.

SECTION 6. IC 14-21-1-32 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 32. (a) Except as provided in subsections (b) and (c), the division may keep reports and information concerning the location of historic and archeological sites confidential if the director of the division determines that disclosure would likely:**

- (1) risk harm to the historic or archeological site;**
- (2) cause a significant invasion of privacy; or**
- (3) impede the use of a traditional religious site by practitioners.**

(b) The division may not disclose reports and information required to be confidential under federal law.

(c) If the director of the division determines that reports and information should be confidential under subsection (a), the director of the department, in consultation with the director of the division, shall determine who may have access to the confidential reports and information.

SECTION 7. IC 14-21-1-33 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 33. An employee of the division or a person authorized by the department may accompany a conservation officer on public or private property to determine if there is a violation of this article.**

SECTION 8. IC 14-21-1-34 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 34. (a) The division may conduct a program to assist private homeowners who have accidentally discovered an artifact, a burial object, or human remains and who need assistance to comply with an approved plan to excavate or secure the site from further disturbance. The division may conduct the program alone or by entering into an agreement with one (1) or more of the following entities:**

- (1) The Indiana historical society established under IC 23-6-3.**
- (2) A historical society (as defined in IC 36-10-13-3).**
- (3) The Historic Landmarks Foundation of Indiana.**
- (4) A professional archeologist or historian associated with a**

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college or university.

(5) Any other entity that the division selects.

(b) In conducting a program under subsection (a), the division may receive gifts and grants under terms, obligations, and liabilities that the director of the division considers appropriate. The director shall use a gift or grant received under this subsection:

(1) to carry out subsection (a); and

(2) according to the terms and obligations of the gift or grant.

(c) The auditor of state shall establish the archeology preservation trust fund for purposes of holding money received under subsection (b).

(d) The director of the division shall administer the archeology preservation trust fund established under subsection (c). The expenses of administering the archeology preservation trust fund shall be paid from money in the trust fund.

(e) The treasurer of state shall invest the money in the archeology preservation trust fund established under subsection (c) that is not currently needed to meet the obligations of the trust fund in the same manner as other public trust funds may be invested. The treasurer of state shall deposit in the archeology preservation trust fund the interest that accrues from the investment of the trust fund.

(f) Money in the archeology preservation trust fund at the end of a state fiscal year does not revert to the state general fund. There is annually appropriated to the division the money in the archeology preservation trust fund for the division's use in carrying out the purposes of this section.

(g) The division may adopt rules under IC 4-22-2 to govern the administration of this section.

SECTION 9. IC 14-21-1-35 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 35. (a) In addition to:**

(1) a:

(A) sentence imposed under this chapter for a felony or misdemeanor; or

(B) judgment imposed under this chapter for an infraction; and

(2) an order for restitution to a victim;

the court may order an individual to make restitution to the archeology preservation trust fund under section 34 of this chapter for the division's cost incurred because of the offense committed by

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the individual.

(b) In ordering restitution under this section, the court shall consider the following:

(1) The schedule of costs submitted to the court by the division.

(2) The cost to the property owner to restore or repair the damaged area of an archeological site or burial ground and place the property in the property's original condition as nearly as practicable.

(3) The amount of restitution that the individual is or will be able to pay.

(c) The court shall immediately forward a copy of an order for restitution made under this section to the division.

SECTION 10. IC 14-21-1-36 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 36. A person who knowingly or intentionally receives, retains, or disposes of an artifact, a burial object, or human remains that have been obtained in violation of this chapter commits possession of looted property, a Class D felony. However, the offense is a Class C felony if the fair market cost of carrying out a scientific archeological investigation of the area that was damaged to obtain the artifact, burial object, or human remains is at least one hundred thousand dollars (\$100,000).**

SECTION 11. IC 14-22-40-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 5.** As used in this chapter, "law enforcement officer" has the meaning set forth in IC 35-41-1-17. The term includes a conservation officer. ~~(as defined in IC 14-9-8-1).~~

SECTION 12. IC 23-14-57-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 4.** This chapter does not apply to the following:

(1) The disinterment, disinterment, or disinterment of remains upon the written order of the coroner of the county in which the cemetery is situated.

(2) The removal of human remains under a plan approved by the division of historic preservation and archeology under IC 14-21-1.

SECTION 13. IC 35-45-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: **Sec. 2.** (a) A person who recklessly, knowingly, or intentionally places or leaves refuse on property of another person, except in a container provided for refuse,

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1 commits littering, a Class B infraction. **However, the offense is a**
2 **Class A misdemeanor if the refuse is placed or left in, on, or within**
3 **one hundred (100) feet of a body of water that is under the**
4 **jurisdiction of the:**

5 **(1) department of natural resources; or**

6 **(2) United States Army Corps of Engineers.**

7 (b) "Refuse" includes solid and semisolid wastes, dead animals, and
8 offal.

9 (c) Evidence that littering was committed from a moving vehicle
10 other than a public conveyance constitutes prima facie evidence that it
11 was committed by the operator of that vehicle.

12 SECTION 14. IC 14-9-8-1 IS REPEALED [EFFECTIVE JULY 1,
13 2006].

14 SECTION 15. [EFFECTIVE JULY 1, 2006] **IC 35-45-3-2, as**
15 **amended by this act, applies only to offenses committed after June**
16 **30, 2006.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Natural Resources, to which was referred House Bill 1258, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, between lines 5 and 6, begin a new paragraph and insert:

"SECTION 2. IC 14-15-2-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 8. **(a) This section does not apply to a body of water that is under the jurisdiction of the:**

(1) department; or

(2) United States Army Corps of Engineers.

~~(a)~~ **(b)** As used in this section, "litter" means bottles, glass, crockery, cans, scrap metal, junk, paper, garbage, rubbish, plastic, or similar refuse.

~~(b)~~ **(c)** In the operation or use of watercraft, a person may not throw, dump, place, deposit, or cause or permit to be thrown, dumped, placed, or deposited:

(1) any litter, filth, or putrid or unwholesome substance; or

(2) the contents of a water closet or toilet, catch basin, or grease trap;

in or upon public water or the banks of public water."

Page 1, line 12, delete "A" and insert "**Except as provided in subsection (b), a**".

Page 2, between lines 7 and 8, begin a new paragraph and insert:

"(b) Subsection (a)(4) does not apply to an entity referred to in section 26.5(a)(1) through 26.5(a)(4) of this chapter."

Page 2, line 8, strike "(b)" and insert "(c)".

Page 2, line 16, delete "one hundred (100)" and insert "**fifty (50)**".

Page 5, between lines 18 and 19, begin a new paragraph and insert:

"SECTION 13. IC 35-45-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2006]: Sec. 2. (a) A person who recklessly, knowingly, or intentionally places or leaves refuse on property of another person, except in a container provided for refuse, commits littering, a Class B infraction. **However, the offense is a Class A misdemeanor if the refuse is placed or left in, on, or within one hundred (100) feet of a body of water that is under the jurisdiction of the:**

(1) department of natural resources; or

(2) United States Army Corps of Engineers.

(b) "Refuse" includes solid and semisolid wastes, dead animals, and offal.

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(c) Evidence that littering was committed from a moving vehicle other than a public conveyance constitutes prima facie evidence that it was committed by the operator of that vehicle."

Page 5, delete lines 21 through 42, begin a new paragraph and insert:

"SECTION 15. [EFFECTIVE JULY 1, 2006] **IC 35-45-3-2, as amended by this act, applies only to offenses committed after June 30, 2006.**"

Delete pages 6 through 7.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1258 as introduced.)

HOFFMAN, Chair

Committee Vote: yeas 11, nays 0.

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